

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

(Yolo)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

RALPHAEL ANDERSON,

Defendant and Appellant.

C058021

(Super. Ct. No. 07-4129)

A jury convicted defendant Ralphael Anderson of witness dissuasion (as a lesser offense of the charged forcible witness dissuasion) and battery of a girlfriend. It acquitted him of infliction of corporal injury on a cohabitant and of making a criminal threat. The court sentenced him to state prison for consecutive terms (the court deeming his misdemeanor sentence as "time served" based on his custody and conduct credits).

On appeal, defendant contends his conviction for witness dissuasion must be reversed for evidentiary and instructional insufficiency. He further argues that the instruction on flight did not have any evidence to support it. He also faults the trial court's failure to articulate its reasoning in denying his

motion for new trial. Finally, he notes that the abstract of judgment incorrectly lists the charged offense rather than the lesser offense of which the jury convicted him. We shall affirm the judgment and direct the trial court to correct its abstract.

### **FACTS**

The pertinent facts are few. Defendant and the victim were in a dating relationship in July 2007. They lived in an RV resort in rural Yolo County, where defendant also worked.

They had been living in their own RVs on adjoining spaces. After a series of fights in early July, the victim took her RV elsewhere, and defendant brought another one onto that space. They continued to date, however.

On the day after she had moved her RV, the victim came to defendant's RV at his invitation. She arrived sometime after 11:00 p.m. At trial, the victim could not recall the reason for the argument that followed. At the preliminary hearing, however, she said that defendant had gotten angry after they walked out of the RV and over to her boat because he did not think she was paying any attention to him. Defendant, whose arm was in a brace from an injury, began to hit her. She returned to the RV and tried to call 911, but defendant took the phone from her before she could speak and disabled it. Pinning her down "for a second," he told her that he would kill her if she called the police and he lost his job; "'I'm going to make it worth it.'" However, because the victim is "a lot bigger than him," he could not restrain her. She shook him off and left the

RV, driving her car across the street to a store where she could call 911 from a pay phone.

Deputies arrived, but could not find defendant at his RV or on the grounds of the RV park. A deputy explained the process for obtaining an emergency protective order to the victim, but she declined because she did not want to wait around and she was not afraid of defendant any more. Defendant called the victim during the night and told her that after she had run out of the RV, he had gone into the vacant one next door. The victim did not see him leave, but knew he would not have been able to get very far, since they were "in the middle of nowhere" and he could not drive. Deputies eventually found defendant at the RV park the next day and arrested him.

## **DISCUSSION**

### ***I***

Defendant was charged with forcibly dissuading a witness in violation of Penal Code section 136.1, subdivision (c)(1).<sup>1</sup> The jury returned a verdict finding defendant guilty of the lesser offense of section 136.1, subdivision (a)(1). Defendant contends no substantial evidence supports his conviction for section 136.1, subdivision (a)(1). We shall conclude the jury intended to convict defendant of a violation of section 136.1, subdivision (b), and we shall order the abstract of judgment amended accordingly.

---

<sup>1</sup> Hereafter, undesignated section references are to the Penal Code.

**A**

Section 136.1 is part of a comprehensive chapter relating to falsification of evidence, including any form of interference with witnesses. (§§ 132-140.) Subdivision (a) of section 136.1 (section 136.1(a)) is directed at efforts to entirely prevent a witness from appearing in court and testifying; on the other hand, subdivision (b) of section 136.1 (section 136.1(b)) applies only where a defendant takes action *before* the filing of charges to dissuade a witness from reporting a crime, or seeking a defendant's arrest, or from seeking and assisting in the filing of charges.<sup>2</sup> (*People v. Fernandez* (2003) 106 Cal.App.4th 943, 948.) In light of the detailed manner in which the chapter provides for prosecuting different types of conduct with different levels of penalty, the categories must be strictly interpreted to avoid any overlapping. (*Id.* at pp. 948-951.)

The gist of three of defendant's arguments stems from a typographical error in the verdicts for the lesser offense, which apparently no one recognized until the trial court received the verdicts. Although the jury was correctly *instructed* on the distinction between the charged offense of forcibly attempting to dissuade the victim from causing his

---

<sup>2</sup> Subdivision (c) of section 136.1 (section 136.1(c)) has the additional element of the use of force or threat of force to dissuade and, unlike the other two subdivisions, is a straight felony and not a "wobbler."

arrest (§ 136.1(c))<sup>3</sup> and the lesser included offense in the absence of any force or threat (§ 136.1(b)),<sup>4</sup> the verdict for the lesser offense labeled it as a "violation of Section 136.1(a)(1) . . . as charged in Count 2 of the Information" and the unused verdict for the charged offense labeled it as a "violation of Section 136.1(b)(1) . . . as charged in Count 2 of the Information."

This led the jury to submit a question to the court: "We need to clarify 2nd charge, have no instructions for "a" and "b" and no definitions or d[es]criptions of either." After consulting with counsel, the trial court sent a response back on the jury's note directing the jurors to the two instructions, on which the court had apparently handwritten "a" (on the definition of the § 136.1(b) offense) and "b" (on the definition of the § 136.1(c) offense).

### **B**

As a result of the mislabeled verdict, defendant moved for a new trial on the ground that the verdict was not supported by any evidence of a violation of section 136.1(a) or that the jury was prejudicially misinstructed. The court denied the motion without elaboration.

Defendant asserts, "It does not appear from the brief comments it made when denying [the] new trial motion[] that the

---

<sup>3</sup> The information alleged that there was a forcible violation of both section 136.1(a) and section 136.1(b).

<sup>4</sup> The instructions, however, did not include the section number of either offense.

trial court applied the correct standard . . . . The court had the positive duty to reweigh the evidence and reach its own conclusion whether it would have decided the case differently. Instead the court simply denied the motion."

Defendant does not acknowledge that "there is a strong presumption that [a trial court] properly exercised [its] discretion" in ruling on a motion for new trial. (*People v. Davis* (1995) 10 Cal.4th 463, 524.) This means it is defendant's burden to produce some affirmative evidence that the court failed to understand the proper standard to apply in ruling on his motion. (Evid. Code, § 664; *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913, 915.) Defendant has not provided any authority that requires the trial court to articulate anything more than an express disposition of his motion, or evidence to rebut the presumption. Nor, for that matter, is there any alternative standard of proof to be applied to the two grounds in the motion, both of which are simply questions of law that do not implicate the trial court's power to assess the evidence independently in a motion for new trial. We therefore do not need to give further consideration to this argument at least in this context (though we must return to these issues in the next section).

### C

This brings us to defendant's two claims regarding his conviction for witness dissuasion. Based on the fact that the verdict specifies a violation of section 136.1(a), he accurately argues that the evidence is insufficient as a matter of law to

support a conviction under that subdivision, because his conduct did not involve dissuading a witness from appearing at trial, and the jury was not instructed on the elements of that offense. This clerical error in the verdict, however, does not restrict us to the offense incorrectly specified in it.

The correct principle is that we must construe a verdict in light of the allegations of the information and the instructions; if an intent to convict a defendant of an offense is clear, then an error in the form of the verdict is immaterial. (*People v. Jones* (1997) 58 Cal.App.4th 693, 710-711 [cited with approval in *People v. Paul* (1998) 18 Cal.4th 698, 707].) The present jury found that defendant committed a violation of section 136.1(b), as the elements of that section were contained in the instruction that the jury applied to the facts.<sup>5</sup> By virtue of the court's handwritten annotation on the instruction, the jury associated the instruction with the verdict that contained an offense mislabeled as section 136.1(a). The jury's intent to convict defendant of violating section 136.1(b) is therefore manifest. Neither the evidence nor the instruction in connection with the latter offense is inadequate. As a result, we reject these two arguments.

---

<sup>5</sup> The reference to the information in the instruction does not add any clarity because (as noted above) it alleged violations of *both* § 136.1(a) and (b).

## II

Defendant contends the trial court should not have given the pattern instruction on flight, which imparts the commonsense wisdom that *if* a defendant flees immediately after the commission of a crime this *may* show a consciousness of guilt, but ultimately the significance of the flight is for the jury to determine and the evidence of flight of itself is insufficient to establish guilt. In conclusory fashion, he asserts, "There was no evidence of 'flight' presented to the jury. [Defendant] was merely in the new trailer next to his that he had just moved into the [RV] resort."

Defendant's conclusory argument is wrong. "Flight" does not require the actual physical act of running or reaching a far-off refuge; it requires only that a defendant display a purpose of avoiding observation or arrest. (*People v. Bradford* (1997) 14 Cal.4th 1005, 1055.) The fact that defendant went to a location other than his ordinary residence when he was aware that the victim was calling authorities (and obviously did not respond to their efforts to contact him at his ordinary residence) is sufficient for the jury to draw an inference that he was in fact attempting to avoid arrest.<sup>6</sup> Moreover, even if the evidence did not warrant instructing the jury on flight, this is ordinarily not prejudicial error (and nothing about the

---

<sup>6</sup> To the extent defendant is raising a challenge to the legality of the instruction itself, this claim has been uniformly rejected. (E.g., *People v. Hernández Rios* (2007) 151 Cal.App.4th 1154, 1158-1159.)



present case is extraordinary). (*People v. Carter* (2005) 36 Cal.4th 1114, 1182-1183.) We therefore reject the argument.

### **III**

The corrected abstract of judgment (a previous one listing the date of the sentencing hearing as the defendant's birth date) lists his conviction as being for a violation of section 136.1(c)(1) (actually, it lists the violation as "section 136.1(©)(1)"), reflecting yet one more clerical error in the designation of his offense. Defendant requests that we direct the trial court to amend the abstract to reflect his actual conviction. The People properly concede the error. We shall do so. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

### **DISPOSITION**

The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting that defendant was convicted of Penal Code section 136.1(b), and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

\_\_\_\_\_  
DAVIS, J.

We concur:

\_\_\_\_\_  
SIMS, Acting P. J.

\_\_\_\_\_  
NICHOLSON, J.